

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHNNY ROMERO Y MAGO, APY DE LA CRUZ Y DE LEON, ACCUSED-APPELLANTS.

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is an appeal from the decision dated July 23, 2012 rendered by the Regional Trial Court , Branch 259, of the City of Paranaque in Criminal Case No. 08-0230, convicting the accused-appellants of Violation of Sec. 5, Article II of Republic Act No. 9165. The fallo of said decision reads:

“WHEREFORE, premises considered the Court finds accused JOHNNY MAGO ROMERO and APY DE LEON DELA CRUZ in Criminal Case No. 08-230 for Violation of Sec. 5, Art. II, RA 9165, GUILTY beyond reasonable doubt and are hereby sentenced to the penalty of life imprisonment and to pay a fine of Php1,000,000.00 each.

Further it appearing that the accused JOHNNY MAGO ROMERO and APY DE LEON DELA CRUZ are detained at Paranaque City Jail and considering the penalty imposed, the OIC Branch Clerk of Court is hereby directed to prepare the Mitimus for the immediate transfer of said accused from the Paranaque City Jail to the New Bilibid Prisons, Muntinlupa City.

The specimen are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to immediately turn-over the remaining representative samples to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to the Supreme Court OCA Circular No. 51-2003.”[1]

Antecedents:

In the Information dated February 4, 2008, Johnny Romero y Mago and Apy Dela Cruz y De Leon were charged of violation of Section 5, Article II of RA 9165 committed as follows:

“That on or about the 3[rd] day of February 2008, in the City of Paranaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding each other, did then and there, without authority of law, willfully, unlawfully and feloniously SELL and DELIVER NINETEEN POINT THREE FOUR EIGHT (19.348) KILOGRAMS OF MARIJUANA, a dangerous drug, in violation of the afore-cited law.”[2]

Version of the Prosecution:

At around 9:00 AM on February 3, 2008, a confidential informant went to PDEA-Regional Officer and talked to Team Leader Pasamonte about the illegal drug activities of a certain “Jay” in Paranaque City. A team was formed to conduct the buy-bust operation. PO2 Anatomy Gabona was designated as the poseur buyer while his immediate back-up was SPO2 Ferdinand Mora. The Confidential Informant (CI) was instructed to order nineteen kilograms of marijuana. The CI negotiated with “Jay” through cellular phone and the agreed price for the 19 kilos of marijuana was P77,900.00. The CI and “Jay” agreed to meet in front of Jollibee at the parking area of Coastal Mall, Brgy. Tambo, Paranaque City. Two five-hundred bills dusted with ultra-violet powder were prepared

together with the boodle money. The team then coordinated with the Southern Police District for the operation, then at 4:30 PM, they proceeded to the meeting place and positioned themselves strategically.

At the target area, Gabona and the CI were approached by two male persons, one wearing jacket and pants and the other wearing shorts. The one in jacket and pants was introduced by the CI to Gabona as “Jay” and Gabona was introduced to “Jay” as the buyer. The companion of “Jay” was carrying three bags. When “Jay” asked where the money is, Gabona told him that it was in his car, so they proceeded to the parked vehicle. Inside the car, Gabona inspected the marijuana and after confirming it, handed the money to “Jay” who then showed it to his companion. Gabona immediately turned on the hazard lights of his car which is the pre-arranged signal to his team that the transaction already materialized. SPO2 Mora rushed to their direction and they effected the arrest of “Jay” and his companion who was identified as “Apyr”. They confiscated 19 bricks of marijuana contained in the three bags which were marked by Gabona with his initials, ABG. Fearing that it might rain and damage the evidence, they proceeded to the nearest Barangay hall and there conducted the inventory of the seized marijuana in the presence of Brgy. Kagawad Ray Gumabao who also signed the inventory sheet (Exh. “L”). Pictures were also taken of the suspects and the contraband. Then they proceeded to their office to conduct the investigation. Gabona and Mora brought the marijuana specimen to the PDEA with a request for their examination. The specimen were received by Chemist Angela Dimasaka and who prepared the Chemistry Report No. DD-022-08. The specimen were tested positive for marijuana. Likewise, the drug test conducted on the suspects had also positive results.[3]

The prosecution submitted their evidence Exhibits “A” to “Z” and submarkings and Exhibits “AA” to “FF” and submarkings. These include, among others, the representative samples taken from each of the 19 bricks of the seized marijuana[4], the Chemistry Report issued by Angela Dimasaka showing that the representative samples submitted were found to be marijuana, a dangerous drug under RA 9165 and the photocopy of the marked 500 bill.[5]

Version of the Defense:

Both accused denied the charges against them. They both claimed that they were co-workers at Vision Builders, Barangay Longos, Bacoor Cavite. On February 3, 2008, Johnny Romero went to Valenzuela to visit his mother who was leaving for Canada. He left at about 3:00 PM and proceeded to Coastal Mall to have his cellular phone fixed. At Coastal Mall, he met his co-worker Apyr Dela Cruz who was eating at Jollibee but after talking about work, he went out to have his cellphone fixed. Ten minutes later, he was about to leave the mall when two persons approached him and asked if he was “Jay”. He answered that he was John but he was immediately handcuffed and was boarded inside a white van at the parking lot. Inside the van, he saw Dela Cruz already in handcuffs. The men frisked him and took his two cellphones and his salary worth P4,500.00, then he was gagged with a handkerchief and blindfolded. They were made to board another vehicle and were brought to a Barangay hall where their pictures were taken. It was then that he saw for the first time the marijuana bricks. He was made to sign the inventory and then he was brought to the laboratory for drug testing.[6]

Apyr Dela Cruz claims that at around 5:00PM on February 3, 2008, he was eating at Jollibee at Coastal Mall, Paranaque. His co-worker Johnny Romero arrived and they exchanged pleasantries and talked about work, after which Romero left him to have his cellphone fixed inside the mall. After Romero left, two men approached him and asked if he knew the person he was talking to. He answered in the affirmative telling them that Romero was his co-worker. He was suddenly handcuffed and brought outside and boarded in a white CRV at the parking lot. There were eight persons inside the vehicle including Romero. He and Romero were blindfolded and were made to board another vehicle. Their blindfolds were removed only when they were at the Barangay hall. Inside the Barangay hall, their pictures were taken and they were told to follow instructions if they want to be released.[7]

The Ruling of the trial court:

The trial court convicted both accused for violation of Sec. 5, Art. II, RA 9165. In its decision dated July 23, 2012, the court a quo found that the prosecution witnesses testified in a candid manner with regard to the conduct of the buy bust operation. The police officers were also able to preserve the integrity and evidentiary value of the seized items. The absence of a representative from the media or the Department of Justice (DOJ) during the inventory and photographing of the seized drug does not render the arrest illegal. Failure to strictly comply with this requirement is not fatal. The police officers explained that they did not conduct the inventory and photographing at the crime scene in order to avoid a commotion and alarming the guards at Coastal Mall. More to the point is that the prosecution was able to prove the elements of the crime to convict a person for violation of Sec. 5, Art. II, RA 9165 to wit: a) the identities of the buyer and the seller, the object of the sale and the consideration; and b) the delivery of the thing sold and the payment for the thing. The court a quo also found the denial of the accused not worthy of credence. The defense did even not present any evidence to corroborate their testimonies.[8]

Both accused appealed.

In their appeal, accused-appellants contend that the procedure laid down by RA 9165 and its Implementing Rules and Regulation (IRR) was not followed, to wit: the marking of the seized marijuana was not done immediately at the scene of the crime, the photographing was done at the Barangay hall away from the crime scene and there was no representative from the media and/or the DOJ during the inventory of the seized drugs. Accused-appellants also point out that there are many inconsistencies in the testimonies of the prosecution witnesses which also contradict each other.

Issue/s:

In short, the issues raised by accused-appellants in their appeal can be summed up in one question: Was the prosecution able to prove their guilt beyond reasonable doubt?

Ruling of this Court:

We affirm the trial court.

In the sale of illegal drugs under Section 5, Article II of RA 9165, what is important to prove is that the sale actually took place and that the corpus delicti was the same thing presented in court. In this case, the prosecution was able to substantially prove the elements constituting the sale of illegal drugs under Sec. 5, Article II of RA 9165. From the testimonies of the police officers who conducted the buy-bust operation, it appears clearly that a) a police officer acted as a poseur-buyer (PO2 Gabona); b) there was a seller (accused-appellant Romero); c) the poseur-buyer and the seller agreed on the sale and delivery of the illegal drugs; and d) the sale was consummated.[9]

Accused-appellants are raising the issue of non-observance of the chain of custody by the police officers who effected the buy-bust.

"Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[10]

The Supreme Court explained in a number of cases that the chain of custody can be established in a buy bust operation by proving the different links, to wit:

First, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[11]

It is extant in the records that the prosecution was able to establish the continuous whereabouts of the marked exhibits consisting of bricks of marijuana from the time it came into possession of the police officers during the buy-bust operation, to the delivery of the derivative samples of the marijuana to the Forensic Chemist for testing in the laboratory to determine its composition and up to the time it was offered in evidence.[12] From the time of the seizure of the bags containing the marijuana, PO2 Gabona affixed his signature (ABG) on the three bags. Chemist Dimasaka testified that she received the bags with the markings containing the bricks of marijuana for forensic examination.

Section 21 (a) of the Implementing Rules and Regulations of R.A. No. 9165 provides the procedure for the custody and disposition of the seized illegal drugs, to wit:

Sec. 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given copy thereof. Provided, that the physical inventory and the photograph shall be conducted at the place where the search warrant is served; or at least the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending team/officer, shall not render void and invalid such seizures of and custody over said items.

The observance of the chain of custody rule is meant to preserve the integrity and the evidentiary value of the seized illegal drugs and to avoid unnecessary doubts with regard to the identity of the evidence. While strict observance of the rule is the standard, substantial compliance thereof by the police officers is sanctioned.[13] In fact, it is embedded in our jurisprudence that non-compliance by the police officers of the observance of the chain of custody rule does not automatically render the arrest illegal or the seized illegal drugs as inadmissible in evidence. The Supreme Court recognizes that there maybe varied conditions in the field where strict compliance with the rule may not be possible.[14]

Admittedly, the police officers who conducted the buy-bust did not mark and photograph the seized marijuana at the scene of the crime. The arresting officer PO2 Anatomy Gabona explained that they did the marking, inventory and photographing of the seized marijuana at the Barangay hall to avoid alarming the guards at Coastal Mall and

causing a commotion and that it might rain and the evidence might get wet. What is of utmost importance in this case is that the movement of the seized illegal drug can be traced step by step from its confiscation by Gabona and Mora to its inventory at the Barangay hall to its delivery to the Forensic Chemist and lastly its identification in court as evidence. In the present case, it is clear that there was substantial compliance with the rule on chain of custody. The police officers marked the seized drugs, photographed and inventoried the same inside the Barangay hall in the presence of the accused-appellants and an elected Barangay Kagawad. There was not a time when the seized drugs were unaccounted for, hence, no break in the chain.

Accused-appellants point to alleged inconsistencies in the testimonies of the prosecution witnesses. We find that the said inconsistencies do not affect the credibility of the prosecution witnesses as to how the crime of selling illegal drugs was committed and how the integrity and evidentiary value of the seized illegal drugs was preserved. The inconsistencies pointed out were minor and trivial and cannot cast a shadow of doubt over the testimonies of the prosecution witnesses positively identifying the accused-appellants as the perpetrators of the crime and the identification of the seized drugs as the corpus delicti.

The only defense proffered by accused-appellants is denial and alibi. Romero's alibi that he just visited his mother in Valenzuela before proceeding to Coastal Mall to have his cellphone repaired lacks credence as it is merely self-serving and uncorroborated. Likewise, Dela Cruz' claim that he was merely eating at Jollibee when he was apprehended and dragged out from the mall does is also merely self-serving. Both accused-appellants did not present any corroborating testimony to bolster their alibi and denial. In the face of the incriminating evidence against them which the prosecution duly proved and which they failed to dispel, We are in accord with the trial court that their guilt was proved beyond reasonable doubt. It is well-entrenched in Our jurisprudence that denial and alibi is inherently weak and constitutes an "unstable sanctuary for felons" because of the facility with which it can be concocted.[15] In order to make alibi and denial legitimate defenses and assume the significance of strength, it must be corroborated by credible and disinterested witnesses.[16]

Under Section 5, Article II of RA 9165, the penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00) shall be imposed upon any person who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

We find no reversible error committed by the trial court to merit the reversal of the assailed decision.

IN VIEW THEREOF, the Decision appealed from is hereby AFFIRMED.

SO ORDERED.

Gonzales-Sison, and Sorongon, JJ., concur.

[1] Rollo, at 49-59

[2] Records, at 1 (Volume 1)

[3] TSN, PO2 Anatomy Gabona on November 3, 2010, June 16 and 29, 2011 and October 27, 2011; SPO2 Ferdinand Mora on December 14, 2011 and February 2, 2012; Chemist Angela Dimasaka on September 9, 2010, March 10, April 27 and May 26, 2011

[4] Exhibits B, B-1 to B-4; C, C-1 to C-5; D, D-1 to D-10

[5] Exhibits N, N-1; O, O-1 to O-3

[6] TSN, Johnny Romero, June 7, 2012

[7] TSN, Apry Dela Cruz, June 27, 2012

[8] Decision dated July 23, 2012

[9] People vs. Langcua, GR No. 190343, February 6, 2013

[10] Section 1(b) of the Dangerous Drug Board Regulation No. 1, Series of 2002

[11] People v. Arriola, G.R. No. 187736, 8 February 2012, 665 SCRA 581, 598; People vs. Kamad, G.R. No. 174198, 19 January 2010, 610 SCRA 295, 307-308

[12] TSN, October 27, 2011, PO2 Anatomy Gabona pp. 14-17; TSN, April 27, 2011, Angela Dimasaka, pp. 2-9; PO2 Gabona, June 16, 2011 pp. 18-20

[13] People v. Dela Rosa, G.R. No. 185166, 26 January 2011, 640 SCRA 635, 653

[14] People vs. Pringas, 639 SCRA 139

[15] People vs. Magdaraog, 428 SCRA 529

[16] People vs. Estoya, 428 SCRA 544

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